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Oceans and the law of the sea: oceans and the law of the sea

Consolidation of the regime established by the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Treaty of Tlatelolco)

General and complete disarmament: promotion of multilateralism in the area of disarmament and non-proliferation; national legislation on transfer of arms, military equipment and dual-use goods and technology; implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction; measures to prevent terrorists from acquiring weapons of mass destruction

Review and implementation of the Concluding Document of the Twelfth Special Session of the General Assembly: convention on the Prohibition of the Use of Nuclear Weapons

Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction

Measures to eliminate international terrorism

Security Council
Fifty-ninth year

Letter dated 18 May 2004 from the Chargé d'affaires a.i. of the Permanent Mission of Cuba to the United Nations addressed to the Secretary-General

I have the honour to enclose herewith the text of a press release on the adoption by the United Nations Security Council of resolution 1540 (2004) and how it relates to the so-called Proliferation Security Initiative (see annex). The press release was issued by the Permanent Mission of Cuba to the United Nations on Friday, 14 May 2004.

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I should be grateful if you would arrange to have the text of this letter and its annex published as a document of the fifty-eighth session of the General Assembly under agenda items 52 (a), 66, 73 (f), (i), (v) and (w), 74 (f), 80 and 156, and of the Security Council.

(*Signed*) Rodney **López Clemente**
Ambassador
Chargé d'affaires a.i.

Annex to the letter dated 18 May 2004 from the Chargé d'affaires a.i. of the Permanent Mission of Cuba to the United Nations addressed to the Secretary-General

Press release of the Permanent Mission of Cuba to the United Nations

Cuba strongly supports general and complete disarmament under strict international control and particularly, the total elimination of nuclear weapons and all weapons of mass destruction, aware of the danger that the sole existence of this kind of weapons entails for all humanity.

Cuba shares the concerns over the risk posed by the link between terrorism and weapons of mass destruction and also fully endorses all legitimate international efforts to prevent terrorists from acquiring this kind of weapons and its means of delivery. However, this threat cannot be confronted through a selective and discriminatory approach limited to fighting the horizontal proliferation, overlooking the vertical proliferation, that is; the qualitative enhancement of the nuclear armament by the States that have these weapons, and disarmament, which must be aimed at the total elimination of weapons of mass destruction.

Cuba favors the creation and strengthening of an international coalition by all States against the use of weapons of mass destruction by terrorists, but such an endeavour must be carried out in compliance with two basic conditions:

1. This threat must be confronted through international cooperation in the framework of the United Nations and the relevant international treaties.

2. The question of proliferation in all its aspects must be solved through political and diplomatic means, within the framework of International Law, including the Charter of the United Nations.

Regrettably, once again, the United States tries to impose its selective and double standards approach on the international community to address the problem of disarmament and arms control, ignoring the fact that the prohibition and total elimination of weapons of mass destruction is the only guarantee that these weapons do not fall into the hands of terrorists.

Instead of contributing to international unity around the issue and the strengthening of the UN's role and that of the international treaties on disarmament and arms control, the so-called Proliferation Security Initiative weakens them.

The multilateral and non-discriminatory approach is the only effective means to prevent terrorists from using weapons of mass destruction.

Several aspects of that initiative are not in line with the principles enshrined in the Charter of the United Nations and those recognized by international law, that prohibit the interference in the domestic affairs of States and the threats or use of force against the territorial integrity or political independence of any State, or the commission of actions in any manner inconsistent with the purposes of the United Nations, by virtue of the recognition of the principle of sovereign equality, embodied in the Charter of the United Nations.

By virtue of the PSI, could be carried out actions clearly contrary to the key provisions of the 1982 UN Convention on the Law of the Sea such as those referred to the right to innocent passage of vessels through international waters of States and the jurisdictional regime of High Sea, embodied in the Convention.

No assurance would exist that prerogatives assumed by PSI participants cannot be manipulated, particularly by States with stronger military power, to abusively act against vessels and aircrafts of other States on different motivations.

Not satisfied with its unilateral acts, contrary to the principles of international law and the UN Charter, and implementing initiatives such as the PSI, with the majority of the States deprived of the possibility of participating in its drafting, despite its important implications, now the United States tries to make it legitimate at international levels, through the adoption of a resolution at the UN Security Council.

The 1540 (2004) Resolution, adopted by that Body on April 28, 2004, is undoubtedly ambiguous enough in its operative paragraph 10 for some States to announce that actions promoted under the so called "Proliferation Security Initiative", are legitimized by the UN Security Council.

They can argue that their actions aimed at interdicting ships and aircrafts that, according to the countries sponsoring that initiative, seek to carry out operations of illegal trafficking of weapons of mass destruction, their means of delivery or related material, are legitimate.

Even more dangerous is enunciating the operative part of that resolution by virtue of the enforcement of Chapter VII of the UN Charter. The most powerful states, particularly the United States, have now an open way, as usual, to manipulate the UN Security Council as they please and to their own convenience, and present to that body any country that they deem as promoting the proliferation of weapons of mass destruction or related-terrorists acts, as a threat to international peace and security, following a selective, discriminatory approach and double standards.

Cuba rejects the arbitrary manipulation or interpretation of Resolution 1540 (2004). In this context, it rejects the eventual use of such resolution as a pre-authorization for the unilateral use of force by any country against specific "non-state actors" or even the States where they are.

This is particularly disturbing in the context of the false and tendentious accusation launched by one of the permanent members of the Security Council against some countries for allegedly developing programs of weapons of mass destruction.

Cuba is deeply concerned about the continued granting to the Security Council of prerogatives and functions that are not of its competence, particularly in the field of disarmament, non-proliferation and arms control. This only contributes to eroding and undermining the legally binding international treaties and agreements, negotiated in the multilateral framework, and which establish equal legal obligations to all States.

Such legal obligations should not be created for the UN Member States without their full participation and sovereign acceptance through their signature and ratification. In this regard, it is counterproductive that the Security Council, of well-known limited composition, has adopted a resolution on a subject that should

continue to be addressed at the international forums specialized in disarmament, non-proliferation and arms control.

The creation of a Security Council Committee from Resolution 1540 (2004) seems to imply the establishment of a separate regime for the non-proliferation of arms that would erode and that could even, in practice, replace the role and functions of the regimes of international treaties existing in that field, including the role corresponding to bodies such as the International Atomic Energy Agency (IAEA) and the Organization for the Prohibition of Chemical Weapons (OPCW).

That Committee will have a limited membership and it can be foreseen that its work will be dominated by one or more Permanent Representatives of the Security Council that, given the existence of the veto power, will never be objects of measures that could be recommended by itself or by the majority of its members.

No less disturbing is the scope of the adopted resolution. Although its main promoters have insisted that this resolution is targeted to the so called "non state actors", the truth is that it goes beyond the set goal to prevent non state actors from obtaining weapons of mass destruction, their means of delivery or related materials. In various parts of the text reference is made to international treaties and agreements adopted by States in such fields and they are demanded to fully enforce them.

Cuba reiterates that the prohibition and total elimination of the weapons of mass destruction, including nuclear weapons, is the only guarantee that such weapons do not fall into the hands of terrorists. In such context, the nuclear weapons States are obliged, in compliance with the provisions of the Treaty on Non Proliferation of Nuclear Weapons (NPT), and together with the rest of States Parties to that Treaty, to establish negotiations to achieve nuclear disarmament.

The States Parties in the several legal instruments currently in force on this matter must take advantage of the review process of such instruments to reaffirm their commitment to adopting all necessary measures at national level to prevent terrorists from acquiring weapons of mass destruction, related materials and technologies to produce them.

The resolution and the "Proliferation Security Initiative" are attempts to replace such instruments, of which most of States of the World are part, and impose a mechanism of selective, non-transparent composition which would act regardless of international law represented by international treaties.

The PSI is a serious threat to multilateralism and international cooperation in the field of non-proliferation of weapons of mass destruction, defined in the multilateral legal framework of treaties on this matter and in the mandate of the relevant international organizations of wide international recognition, such as NPT, IAEA, OPCW and the Convention on Biological Weapons.

The observance of the principles of International Law and the UN Charter is the only effective way for international peace and security. The world must be ruled by a system of collective security based on the cooperation that can provide full guarantees for all.

Permanent Mission of Cuba to the UN
New York, 14 May 2004